

Office of the Secretary of Labor

§ 18.407

PRESUMPTIONS

§ 18.301 Presumptions in general.

Except as otherwise provided by Act of Congress, or by rules or regulations prescribed by the administrative agency pursuant to statutory authority, or pursuant to executive order, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

§ 18.302 Applicability of state law.

The effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.

RELEVANCY AND ITS LIMITS

§ 18.401 Definition of *relevant evidence*.

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

§ 18.402 Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, pursuant to executive order, by these rules, or by other rules or regulations prescribed by the administrative agency pursuant to statutory authority. Evidence which is not relevant is not admissible.

§ 18.403 Exclusion of relevant evidence on grounds of confusion or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of confusion of issues, or misleading the judge as trier of fact, or by considerations of undue delay, waste of time, or

needless presentation of cumulative evidence.

§ 18.404 Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) *Character evidence generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except evidence of the character of a witness, as provided in §§ 18.607, 18.608, and 18.609.

(b) *Other crimes, wrongs, or acts.* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

§ 18.405 Methods of proving character.

(a) *Reputation of opinion.* In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) *Specific instances of conduct.* In cases in which character or a trait of character of a person is an essential element of a claim or defense, proof may also be made of specific instances of that person's conduct.

§ 18.406 Habit; routine practice.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

§ 18.407 Subsequent remedial measures.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove

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negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

§ 18.408 Compromise and offers to compromise.

Evidence of furnishing or offering or promising to furnish, or of accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, or negating a contention of undue delay.

§ 18.409 Payment of medical and similar expenses.

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

§ 18.410 Inadmissibility of pleas, plea discussion, and related statements.

Except as otherwise provided in this rule, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:

- (a) A plea of guilty which was later withdrawn;
- (b) A plea of nolo contendere;
- (c) Any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (d) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not

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result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible in any proceeding wherein another statement made in the course of the same plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.

§ 18.411 Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

PRIVILEGES

§ 18.501 General rule.

Except as otherwise required by the Constitution of the United States, or provided by Act of Congress, or by rules or regulations prescribed by the administrative agency pursuant to statutory authority, or pursuant to executive order, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

WITNESSES

§ 18.601 General rule of competency.

Every person is competent to be a witness except as otherwise provided in these rules. However with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.